IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1111 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHISHKUMAR VARDHICHAND JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1111 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution, petitioner - detenu who has been detained by the District Magistrate, Banaskantha at Palanpur, vide order dated January 16, 2001 in exercise of powers conferred under sub-section (1) of section (3) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act') has challenged the

said order and prayed to issue a writ of mandamus quashing and setting aside the order of detention and setting him at liberty forthwith.

2. The grounds of detention order dated January 16, 2001 manifest that the petitioner is involved in four prohibition cases which are registered against him at Palanpur City Police Station, vide CR Nos. 49/2000, 198/2000, 216/2000 and 489/2000. Out of these four cases, two cases are pending for trial and two cases are pending for investigation. As per the detaining authority, ordinary provisions of law are found to be insufficient to curb the anti social activities of the detenu and he has become an obstruction to the maintenance of public order and hence the impugned order of detention is passed against him.

3. It is contended by the petitioner that the allegations made against him are not correct and denied the same. The allegations made in the order are vague and there is no material to show that either he or his men have ever disturbed the public order at the time of commission of the aforesaid criminal cases. The petitioner further contended that all the incidents as per the statements recorded of the witnesses whose identity are not disclosed, whose substances are almost similar in nature, are the instances of breach of law and order. The petitioner, therefore, does not come or fall within the purview of disturbance of public order. It is further contended that the order of detention passed is without application of mind.

4. I have heard Ms. Subhadraben Patel, learned advocate for the petitioner and Mr. KT Dave, learned AGP for respondents, who has contested the petition. He however, does not dispute the factual aspect of the verification of the statements by the Deputy Superintendent of Police, Palanpur.

5. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition as well as the statements of the witnesses which are recorded by the police official and verified by the Dy.S.P. upon which reliance is placed by the detaining authority for passing the impugned order of detention. There is no manner of doubt that the detaining authority has relied upon the statements of three witnesses which came to be recorded on December 31, 2000, January 2, 2001 and again on January 2, 2001 which were verified by the Dy.S.P. on January 5, 2001. Therefore, it can be said that the

detaining authority, that is, District Magistrate, Banaskantha at Palanpur has relied upon the verification made by the Dy.S.P., Palanpur but he himself has not verified the said statements. Therefore, it can be said that before passing the impugned order of detention, the detaining authority has not applied his mind properly.

6. In this connection, reference is required to be made to the judgment of this Court in the case of Jakirbhai Rahimbhai Nagori v. District Magistrate, Mehsana and others, 1996 (1) GLH 300, wherein this Court has held that the Superintendent of Police, who examined the statements at the instance of detaining authority wrote below every statement one word "verified". It was held by this Court that claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and the continued detention of the detenu was held to be illegal.

7. Applying the said principles to the facts of the present case, it is seen that the detaining authority has not cared to verify the statements of the witnesses and on the basis of the verification made by the Deputy Superintendent of Police, the detaining authority has passed the order of detention. Therefore, the subjective satisfaction arrived at by the detaining authority is not proper, and therefore, the detention order stands vitiated and the petition deserves to be allowed on this count alone.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 16, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. It is stated by the learned advocate for the petitioner that the petitioner - detenu is transferred from Bhuj jail to Ahmedabad Central Prison, Sabarmati, Ahmedabad. Therefore, writ of this order shall be sent to the Ahmedabad Central Prison, Sabarmati, Ahmedabad. Rule is made absolute with no order as to costs. Direct service is permitted.

23.8.2001. (A.M.Kapadia, J.)

(karan)